

To: David Bernhardt (b) (6) David Bernhardt Magallanes,
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Cc: Brown, Laura[Laura.Brown@sol.doi.gov]
From: Jorjani, Daniel
Sent: 2017-08-08T10:58:06-04:00
Importance: Normal
Subject: Fwd: National Monument Information
Received: 2017-08-08T10:58:56-04:00
[OUTLINE OF MEMORANDUM FOR THE PRESIDENT Aug 7 2017.docx](#)
[Analysis sheet for Lime Ridge Clovis Site BENM DRAFT Template.docx](#)
[Bears Ears Objects Protection.docx](#)
[DRAFT -- Relevant Acts in Chronological Order.docx](#)

David - Current draft from Laura.

----- Forwarded message -----

From: Brown, Laura <laura.brown@sol.doi.gov>
Date: Mon, Aug 7, 2017 at 3:44 PM
Subject: National Monument Information
To: Daniel Jorjani <daniel.jorjani@sol.doi.gov>
Cc: Kevin Haugrud <jack.haugrud@sol.doi.gov>, "Moody, Aaron" <aaron.moody@sol.doi.gov>

Attorney Work Product/Attorney Client Privileged Communication

Dan:

Please find attached, four documents.

Draft outline of a memo from the Secretary to the President. As you can see, the final memo will be rather detailed. Sections of the memo are being drafted, but dropping them into this outline would, I believe, not be helpful since at this point we are just making sure we have all of the sections of the memo identified.

Example of an analysis sheet template. The attached example for the Lime Ridge Clovis site sets forth the description, location and protective measures for the area. This is publicly available information that BLM prepared for its Monticello land use planning process. We will want to discuss this summary of available information with BLM to determine if this is something we should do for the specific and general objects in the proclamation. You'll see in the draft outline at page 3 the more streamlined discussion of Lime Ridge Clovis site.

A draft chart that sets forth general and specific objects from the 2016 proclamation and associated baseline protections.

A draft summary of relevant baseline protection laws. These would be applied as a "screen" during the review process to identify relevant laws.

Please let me know if you would like to discuss this in greater detail. In the meantime, we will continue to refine the attached and work with BLM to fill any gaps.

Laura

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DISCUSSION DRAFT**ANALYSIS SHEET FOR:****LIME RIDGE CLOVIS SITE****Description**

"The Lime Ridge Clovis site, located 15 km southwest of Bluff, Utah, is the first known Clovis site on the northern Colorado Plateau" (AMS 4.2.1; see also RMP 3.3.2.1). "The Lime Ridge Clovis Site consists of a fairly light, dispersed artifact scatter that measures about 80 x 110 m. The site is situated on a high finger-ridge that offers an uninterrupted 360-degree view and, notably, overlooks a canyonhead nearby" (William E. Davis & Jonathan Till, *The Lime Ridge Clovis Site: Old and New Data*, available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwils-Ov8r3VAhXk1IMKHcshDpkQFggmMAA&url=https%3A%2F%2Fwww.archaeologysouthwest.org%2Fpdf%2Faswm28-3-4%2Fdavis%20and%20till.pdf&usq=AFQjCNFiNoMJuC3CUQySKjKhMGaTOsOVw>).

Although the artifacts recovered from the site appear to be scientifically significant, it's unclear whether anything of interest remains at the site. Virtually all of the recovered artifacts were found on the surface (Davis & Till, *supra*; R.E. Burrillo, *Celebrating a Mammoth Dust-Up in Bluff*, available at <https://www.archaeologysouthwest.org/2016/12/20/celebrating-a-mammoth-dust-up-in-bluff/>), and recent investigations have focused on examining the previously collected artifacts (Davis & Till, *supra*). On the other hand, sources also indicate that "the Lime Ridge Clovis site has been re-investigated several times over the past several decades" (Burrillo, *supra*), so it may be premature to conclude that there are no important cultural resources left at the site.

Location

BLM describes the site as being "located 15 km southwest of Bluff, Utah" (AMS 4.2.1; see also RMP 3.3.2.1). Other sources place it "just a few miles west of Sand Island along the San Juan River corridor" (Burrillo, *supra*). Elsewhere in the RMP, a mineral deposit site is described as being "located on Lime Ridge and northeast of Mexican Hat" (RMP 3.8.3.4.1).

Description of Threats [Placeholder for BLM to draft]**Protective measures addressing threats**

Generally speaking, the Lime Ridge area is open to multiple use under the Monticello RMP, with the exceptions below. There are no GRSG habitat management areas in the vicinity.

Parts of the Lime Ridge area, along the San Juan River and along what appears to be Comb Ridge in the eastern half of the area, are NSO for O&G, and areas just north of the Lime Ridge area are closed to O&G (ROD map 18).

Parts of the Lime Ridge area near the river are closed to OHV; the rest of the area is limited to designated routes (ROD map 13).

The area just north of the Lime Ridge area is designated as the Valley of the Gods ACEC, and the Hole-in-the-Rock Trail ACEC loops through the eastern portion of the Lime Ridge area (ROD map 11).

An area farther yet to the north is part of the Road Canyon WSA (ROD map 10).

Parts of the Lime Ridge area are designated as inventoried LWCs not managed for WCs (ROD map 8).

Parts of the Lime Ridge area, mostly in its far eastern portion, are Gunnison's Prairie Dog habitat or crucial winter deer habitat (ROD map 14).

[placeholder for summary BLM statement regarding sufficiency of protective measures other than monument designation].

DATE: Aug. 7, 2017

Attorney-Client Privileged/Attorney Work Product**DRAFT -- Relevant Acts in Chronological Order****1. Antiquities Act of 1906**

The Antiquities Act, 54 U.S.C. §§ 320301-320303, authorizes the President to declare “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest” to be national monuments and “reserve parcels of land as a part of the national monuments.” *Id.* § 320301(a)-(b). In addition, the act requires those who wanted to examine ruins, excavate archeological sites, and gather objects of antiquity to secure a permit from the relevant land management agency. *Id.* § 320302. Prior to the enactment of ARPA, those who violate the act’s permitting requirements could be subject to a fine under Title 18 of the US Code and imprisoned for up to 90 days under 16 U.S.C. § 433. Currently, the Antiquities Act contains no penalty provision, though the relevant land management agency may seize any object of antiquity taken from federal lands without a permit, or contrary to the terms of a permit. 43 C.F.R. 3.16.

2. Migratory Bird Treaty Act

[detailed information to follow]

3. Historic Sites, Buildings, and Antiquities Act

[detailed information to follow]

4. The Bald and Golden Eagle Protection Act

[detailed information to follow]

5. Wilderness Act of 1964

The Wilderness Act, 16 U.S.C. §§ 1131-1136, prohibits within wilderness area, subject to specific exceptions and private existing rights, commercial enterprise, permanent and temporary roads, the use of motor vehicles, motorized equipment, and motorboats, landing aircraft, mechanical transport, and structures and installations. 16 U.S.C. § 1133(c).

6. National Historic Preservation Act

The National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.* (NHPA), is a process-oriented statute that protects historical and archaeological sites in the United States. Among other things, the NHPA requires federal agencies to follow what is known as the Section 106 review to evaluate the impact of all federally funded or permitted projects, activities, or programs on historic properties¹. Section 106 of the NHPA requires federal agencies to: (i) consider the potential effects of the project, activity, or program on any historic properties that are listed on or eligible for listing in the National Register, and (ii) allows the Advisory Council on Historic Preservation, an independent agency that promotes the preservation, enhancement, and productive use of the nation’s historic resources, and advises the President and Congress on national historic preservation policy, an opportunity to comment on the project. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. The specific review process, which is set forth in the ACHP’s Section 106

¹ The NHPA defines historic properties to include “any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object.” 54 U.S.C. § 300308.

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regulations, 36 C.F.R. Part 800, requires all federal agencies, in consultation with the State Historic Preservation Officer (SHPO) (i.e., the state official responsible for assisting federal agencies in carrying out their responsibilities under Section 106, *see* 54 U.S.C. § 302303(b)), to: (i) identify all historic properties within the project's area of potential effects; (ii) assess the potential effects of the undertaking; and (iii) seek ways to avoid, minimize, or mitigate any adverse effects on historic properties. Although the NHPA sets forth a detailed process to identify and potentially avoid adverse effects to historic properties, the statute does not ultimately prevent their demolition or alteration.

7. Wild and Scenic Rivers Act

[detailed information to follow]

8. Wild Free-Roaming Horses and Burros Act

[detailed information to follow]

9. Endangered Species Act

[detailed information to follow]

10. Archaeological and Historic Preservation Act

[detailed information to follow]

11. Archaeological Resources Protection Act

Congress passed the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-470mm (ARPA), which prevents, among other things,² the unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources³, 16 U.S.C. § 470ee(a), after it became clear that the Antiquities Act did not effectively prevent or deter deliberative, criminal looting of such sites. Under ARPA, no one may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands without a permit, which will be granted by the relevant federal land management agency only if, among other things, the excavation is undertaken for the purpose of further archaeological knowledge in the public interest. 16 U.S.C. § 470cc. Those who violate ARPA are subject to stiff penalties. Those convicted of initial violations of APRA can be punished with fines up to \$10,000 and imprisonment for up to one year, though fines can be increased to up to \$20,000 and imprisonment can last up to two years if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair or such resources exceeds \$500. 16 U.S.C. §

² ARPA also requires the federal land managers responsible for the protection of archaeological resources to hold information about the locations and nature of such resources confidential unless providing information would further the statute's purpose and not create a risk of harm to the resources. 16 U.S.C. § 470hh.

³ Archaeological resource is defined as any physical evidence of human habitation, occupation, use or activity, which is at least 100 years of age, and which is capable of providing scientific or humanistic understandings of past behavior, cultural adaptation, and related topics. 43 C.F.R. § 7.3(a). Archeological resources can include, but are not limited to, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. 16 U.S.C. § 470bb(1). Nonfossilized and fossilized paleontological specimens are not considered archaeological resources unless they are found in an archaeological context. *Id.*

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470ee(d).⁴ Comparatively, those convicted of repeat offenses can be fined up to \$100,000 and imprisoned for up to five years. *Id.* In addition, violators of ARPA's prohibitions (other than those who remove arrowheads located on the surface of the ground) can be assessed a civil penalty, 16 U.S.C. 470ff; 43 C.F.R. § 7.15, and be forced to forfeit the vehicle(s) and equipment they used in commission of the violation. 16 U.S.C. 470gg; 43 C.F.R. § 7.17.

12. Federal Cave Resources Protection Act

The Federal Cave Resources Protection Act, 16 U.S.C. § 4301 et seq., prohibits the disclosure of locations of significant caves, removing cave resources, and vandalizing or disturbing cave resources. [more information to follow]

13. Native American Graves Protection and Repatriation Act

In addition to describing the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American cultural items, the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq. (NAGPRA), provides protection for Native American burial sites on federal and tribal lands and stipulates that violations of the act's requirements and prohibitions may result in criminal penalties. [more information to follow]

14. Paleontological Resource Protection Act

The Paleontological Resource Protection Act, 16 U.S.C. §§ 470aaa-470aaa-11 (PRPA), was signed into law in 2009. Subject to an exception for casual collecting, the PRPA generally prohibits anyone from excavating, removing, damaging, or otherwise altering or defacing paleontological resources.⁵ 16 U.S.C. § 470aaa-5(a). Other than someone engaged in casual collecting, any collection of paleontological resources on federal lands must occur subject to a valid permit from the Department of Agriculture or the Department of the Interior. 16 U.S.C. § 470aaa-3. Such permits may be issued only if, among other things, the collection is undertaken for the purpose of further paleontological knowledge or for public education. *Id.* At a minimum, every permit issued under the PRPA must require that the collected paleontological resources remain property of the United States and be preserved for the public in an approved repository. *Id.* Those who are convicted of initial violations of the PRPA's prohibitions may be fined in accordance with Title 18 of the United States Code and/or imprisoned for up to five years,⁶ whereas the penalty may be doubled for those who are convicted of second or subsequent violations. 16 U.S.C. § 470aaa-5. Like the ARPA, those who violate the PRPA may also be assessed a civil penalty,⁷ 16 U.S.C. § 470aaa-6, and any paleontological resources in their possession may be subject to forfeiture. 16 U.S.C. § 470aaa-7. Congress directed the Department of Agriculture and the Department of the Interior to promulgate regulations implementing the PRPA as soon as practicable. 16 U.S.C. 470aaa-9. The U.S.

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⁵ Paleontological resources are defined to include any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest and that provide information about the history of life on earth. 16 U.S.C. § 470aaa(4).

⁶ If the sum of the commercial and paleontological value of the paleontological resources involved and the cost of restoration and repair does not exceed \$500, a violator may only be sentenced to up to two years in prison. 16 U.S.C. 470aaa-5(c).

⁷ The allowable civil penalty for any one violation of the PRPA may not exceed an amount equal to double the cost of response, restoration, and repair of resources and paleontological site damage plus double the scientific or fair market value of resources destroyed or not recovered. 16 U.S.C. 470aaa-6(a)(4).

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Forest Service published their regulations (36 C.F.R. Part 291) on April 17, 2015, 80 Fed. Reg. 21588; the Department of the Interior's regulations have not yet been finalized.⁸

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⁸ The PRPA also directs the Department of Agriculture and the Department of the Interior resource management plans for paleontological resources that incorporate inventory, monitoring, and the scientific and educational use of paleontological resources and emphasize interagency coordination and, where possible, collaborative efforts with non-federal partners, the scientific community, and the general public. 16 U.S.C. § 470aaa(1).

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August 7, 2017

MEMORANDUM FOR THE PRESIDENT

FROM: RYAN ZINKE

SUBJECT: Recommendation for modification of the Bears Ears National Monument

(b) (5) ACP, (b) (5) AWP, (b) (5) DPP



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**Protection of Specific Objects Identified in Proclamation No. 9558
Under Proposed Boundary Modification**

| <u>Specific Objects</u> | <u>Protected By</u> | | |
|---|---------------------|-------------------|----------------------------|
| | Proposed NM Units | Wilderness & WSAs | Monticello RMP Designation |
| (b) (5) DPP, (b) (5) AWP, (b) (5) ACP [Redacted] | [Redacted] | | |
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Protection of Specific Objects Identified in Proclamation No. 9558 Under Proposed Boundary Modification

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